

# AUDITING SCIENTOLOGY: REEXAMINING THE CHURCH'S 501(c)(3) TAX EXEMPTION ELIGIBILITY

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## I. INTRODUCTION

The Church of Scientology (the Church) is one of the most discussed religions of the modern era, and its beliefs and practices have been shrouded in controversy since its emergence in the 1950s.<sup>1</sup> Since then, Scientology has expanded globally, with churches in many major population centers around the world.<sup>2</sup> The Church maintains nontraditional beliefs and doctrines, which have given rise to criticism from both the religious and scientific communities.<sup>3</sup> In addition to its unconventional religious teachings, the Church has also garnered significant attention for its incessant efforts to silence those who speak out against it.<sup>4</sup> However, perhaps the most common controversy surrounding the religion is its tax exemption status.<sup>5</sup> The Internal Revenue Service (IRS) granted the Church tax exemption under § 501(c)(3) of the Internal Revenue Code on the grounds that it was organized and operated for religious purposes.<sup>6</sup> Over time, the Church has developed a long and complex history with the IRS, revolving solely around the organization's tax-exempt status.<sup>7</sup>

This Comment will focus on the history of Scientology's § 501(c)(3) status, legislative and judicial requirements for maintaining tax exemption eligibility, and justifications for reexamining the Church's current status as a tax-exempt religious organization. While many scholarly articles have discussed Scientology's tax exemption status broadly,<sup>8</sup> this Comment is the first to provide rationalizations for an investigation into the Church's activities to assess its compliance with the requirements enumerated in § 501(c)(3) and the common law.

Part II provides a general background of the subject matter. This section details the statutory and common law requirements for obtaining and maintaining tax exemption under § 501(c)(3), and briefly discusses the history and evolution of Scientology's tax exemption status, as well as its anomalous interactions with the IRS.

Part III will explore Scientology's Bridge to Total Freedom and illuminate the innate commercial nature of the religion. Part IV will address the fear and suppression tactics instituted by the Church's Fair Game Policy,

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1. Douglas Frantz, *Scientology's Puzzling Journey from Tax Rebel to Tax Exempt*, N.Y. TIMES, Mar. 9, 1997 (¶ 1), at 1.

2. *Scientology: Unparalleled Growth Since 2004*, SCIENTOLOGY NEWSROOM, <https://www.scientologynews.org/quick-facts/> (last visited Oct. 12, 2021).

3. See LAWRENCE WRIGHT, *GOING CLEAR: SCIENTOLOGY, HOLLYWOOD, & THE PRISON OF BELIEF* 79 (2013).

4. See discussion *infra* Part IV (describing the Church's fear and suppression tactics under its Fair Game Policy).

5. See Frantz, *supra* note 1.

6. *Id.*

7. *Id.*

8. See, e.g., Paul Horwitz, *Scientology in Court: A Comparative Analysis and Some Thoughts on Selected Issues in Law and Religion*, 47 DEPAUL L. REV. 85, 109–10 (1997).

and the resulting detriment to the fundamental national public policy prohibiting suppression of free speech. Part V will then discuss private inurement and illustrate how the Church facilitates the funneling of funds to its top executives and influential celebrity Scientologists. All of these sections address specific requirements that religious organizations must fulfill in order to maintain tax exemption eligibility, and they also provide examples of how the Church violates each requirement.

## II. CHURCH AND LEGISLATIVE HISTORY

As an initial matter, it is crucial to understand the basic components of both Scientology and tax exemption of nonprofit organizations. Neither topic is regarded as common knowledge, as they each share certain complexities that can prove difficult for outsiders who are unfamiliar with the subjects to understand. Scientology is notoriously secretive,<sup>9</sup> and tax law is notoriously complicated; however, with the essential knowledge provided herein, these two topics are quite simple to apprehend without having to experience the religion or a tax law class firsthand.

Section II.A will outline the general practices of the Church of Scientology. This section explores the Church's origins as well as Scientologists' central belief system and religious philosophy. Section II.B will detail the requirements, both statutory and common law, for obtaining and maintaining tax exemption status as a religious organization. This section will also highlight the government's interest in, and purpose behind, extending tax exemption to certain organizations. Finally, Section II.C will provide a brief history of Scientology's tax exemption status and summarize its many encounters with the IRS—some cordial, others much less so.

### A. *The Origins of Scientology*

The Church of Scientology emerged in the early 1950s—though much of its origin and subsequent evolution is shrouded in mystery.<sup>10</sup> As a result, the general public's religious inquiries have historically remained unanswered.<sup>11</sup> However, in recent years, many Scientology defectors have emerged and spoken out regarding their experiences with the Church.<sup>12</sup> These firsthand accounts often display a strong opposition to Scientology—toward

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9. See generally *id.* at 97 n.112 (discussing the Church's mysterious nature and the rationale behind shielding the public from certain religious information).

10. See WRIGHT, *supra* note 3, at 96 (pinpointing 1952 as Scientology's year of origin). But see *Scientology: Its Background and Origins*, SCIENTOLOGY, <https://www.scientology.org/what-is-scientology/scientology-background/> (last visited Oct. 12, 2021) (claiming the religion draws on 50,000 years of wisdom but failing to provide an exact date of origin).

11. See Horwitz, *supra* note 8, at 97 n.112.

12. See, e.g., *Leah Remini: Scientology and the Aftermath* (A&E television broadcast Nov. 29, 2016–Aug. 26, 2019) (sharing former Scientologists' narratives regarding the Church's practices and leaders).

both its belief system and its leadership—though oftentimes, the Church disagrees with and contradicts these public statements through press releases of its own.<sup>13</sup> Despite the Church’s denials, and because many former Scientologists’ experiences are corroborated by other’s personal accounts,<sup>14</sup> this Comment will still consider and rely upon past Scientologists’ testimonies as credible evidence.

### *1. L. Ron Hubbard and Dianetics*

The Church of Scientology was founded by L. Ron Hubbard, a prominent pulp and science fiction author, and a World War II veteran.<sup>15</sup> In 1950, Hubbard published *Dianetics: The Modern Science of Mental Health*, a book he claimed would expand the capabilities of the human mind.<sup>16</sup> Within *Dianetics*, Hubbard coined an entirely new vocabulary to describe the human psyche and the ideology of Dianetics as a practice.<sup>17</sup> For example, Hubbard utilized the term “engram” to refer to memories of traumatic events that one has experienced—either in this life, or in a past life.<sup>18</sup> Hubbard claimed that these engrams could negatively alter one’s behavior or create psychosomatic disorders within the body, and that one must dispose of these engrams by reciting the details of the traumatic event repeatedly, until the memory is devoid of all emotion.<sup>19</sup> Once the emotions attached to the memories are erased, “all aberrations and psychosomatic illnesses vanish,” leaving the person “Clear.”<sup>20</sup> These psychosomatic illnesses include “sinusitis, allergies, some heart trouble, ‘bizarre’ aches and pains, poor eyesight, arthritis, etc.”<sup>21</sup> Hubbard referred to the philosophies of Dianetics as an “exact science” and claimed that the findings therein were only uncovered after “many years of exact research and careful testing.”<sup>22</sup> However, Hubbard failed to cite even one scientific study in *Dianetics* that supported his contentions.<sup>23</sup> As a result of the lack of evidence, the scientific community widely and openly

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13. *See id.*

14. *See, e.g., id.*; Nina Hernandez, *Scientology Defectors: A Timeline*, ROLLING STONE (Jan. 30, 2017, 7:25 PM), <https://www.rollingstone.com/culture/culture-lists/scientology-defectors-a-timeline-126911/amy-scobee-127581/> (describing famous defectors and the Church’s response to them).

15. WRIGHT, *supra* note 3, at 33, 37, 41–42.

16. *Id.* at 75–76.

17. *Id.* at 74–75.

18. *Id.* at 76.

19. *Id.* at 77.

20. *Id.* at 78 (citations omitted); *see infra* notes 52–58 and accompanying text (defining and explaining the concept of going Clear in greater detail).

21. Horwitz, *supra* note 8, at 91 (quoting L. RON HUBBARD, SELF ANALYSIS 14 (7th ed. 1974)).

22. L. RON HUBBARD, DIANETICS: THE MODERN SCIENCE OF MENTAL HEALTH ii, 1 (2007).

23. WRIGHT, *supra* note 3, at 77.

disagreed with the practice of Dianetics—criticizing Hubbard’s credibility as a reliable source for mental health advice and treatment.<sup>24</sup>

Despite mental health professionals’ substantial backlash against Dianetics, many Americans were looking for a source of light and stability in their lives post-World War II, and Dianetics seemed to be the perfect solution.<sup>25</sup> *Dianetics* topped the *New York Times*’ bestseller list for twenty-eight weeks and crowds flocked to join Dianetics groups across the country to experience “auditing”—Hubbard’s coined term for the process through which a person would re-experience past trauma to release engrams.<sup>26</sup> To fulfil the growing demand for auditing, Hubbard established training centers across the country where he explained the auditing process and trained new auditors to conduct these sessions.<sup>27</sup> These trainings were not free of charge, and the course fees, as well as his other book and lecture sales, resulted in a mass influx of income for Hubbard.<sup>28</sup>

However, after people began to question the efficacy of Dianetics and complained they were not receiving the results promised, public excitement diminished and the Dianetics fanbase dwindled.<sup>29</sup> Over the course of just one year, “Hubbard had gone from destitution and obscurity to great wealth and international renown, followed by a crashing descent.”<sup>30</sup> Even his auditor-training program was forced to declare bankruptcy.<sup>31</sup> Following his return to a life of normalcy, Hubbard retreated to the Midwest while figuring out his next step.<sup>32</sup>

## 2. *A Religion Is Born from the Principles of Dianetics*

The history and origins of the Church of Scientology are somewhat unclear, despite the fact that it is an extremely modern religion.<sup>33</sup> In a letter written by Hubbard to an early Scientologist, Helen O’Brien, Hubbard suggested moving forward with Scientology from a religious angle to mitigate the declining public opinion and sales from the initial Scientology

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24. *Id.* at 79 (“‘This volume probably contains more promises and less evidence per page than has any publication since the invention of printing,’ the Nobel physicist Isidor Isaac Rabi wrote in his review of *Dianetics*.”) (quoting Isidor Isaac Rabi, *Dianetics: The Modern Science of Mental Health*, by L. RON HUBBARD, *SCI. AM.* 57–58 (1951) (book review)).

25. *Id.* at 78.

26. *Id.*

27. *Id.* at 85.

28. *Id.*

29. *Id.* at 86, 95.

30. *Id.* at 95.

31. *Id.*

32. *Id.*

33. See Horwitz, *supra* note 8, at 97 n.112 (suggesting some inconsistency with the Scientology doctrine).

movement.<sup>34</sup> The Church of Scientology's own website does not address this letter, nor does it provide a clear reason why Scientology surfaced so suddenly in America, and its website is relatively vague when describing the Church's background and origin—failing to even identify a specific year of emergence.<sup>35</sup> This veil, intended to conceal the religion as a whole, was put in place because according to the Church, only Scientologists have the ability to process certain tenets of the religion.<sup>36</sup>

For example, only Scientologists may learn man's origin story, though parishioners must wait until they reach a certain "level" of Scientology before they are exposed to such information.<sup>37</sup> The Church maintains that premature exposure to sensitive religious material could be hazardous to those who are not adequately prepared.<sup>38</sup> However, with modern day media leaks, non-Scientologists have now discovered the Church's teachings on the creation of man: In short, an evil galactic overlord named Lord Xenu ruled over the Galactic Confederacy, and in order to reduce overpopulation on his planet, he gathered beings and sent them to the prison planet (Earth) where they were dropped into volcanoes, disintegrated by hydrogen bombs, and then turned into disembodied spirits that attached to newborn children.<sup>39</sup> The Church has since released statements insisting that the creation story of man was "purposely distorted" with the intent to "hold the Church up to ridicule and contempt."<sup>40</sup>

Nevertheless, many scholars hypothesize that Hubbard had quickly depleted his financial reserves from *Dianetics* sales, and that he merely established Scientology as a final attempt to capitalize on the waning profitability of Dianetics as an ideology and practice.<sup>41</sup> After all, Hubbard had reportedly speculated that "[i]f a man really wanted to make a million dollars, the best way to do it would be to start his own religion."<sup>42</sup> In essence, critics contend that the religion is merely Dianetics repackaged.<sup>43</sup> As a religion, the Church of Scientology "retains many of the basic principles of Dianetics, as well as the focus on auditing as a course of therapy and self-improvement, [and] it adds an overlay of spirituality."<sup>44</sup>

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34. See Mike Rinder, *Scientology's Religious Angle: A Twisted History*, MIKE RINDER'S BLOG (May 15, 2019), <https://www.mikerindersblog.org/scientologys-religious-angle-a-twisted-history/>.

35. SCIENTOLOGY, *supra* note 10.

36. Horwitz, *supra* note 8, at 97–98 (discussing the basic tenets of the Church of Scientology).

37. *Id.*

38. *Id.* at 99.

39. *Id.* at 97.

40. Jay Matthews, *Scientology Winning in Court: Mainstream Groups Help Support Church's Fight for Legitimacy*, WASH. POST, Dec. 1, 1985, at A4 (citations omitted).

41. WRIGHT, *supra* note 3, at 95–96. *But see* Horwitz, *supra* note 8, at 93 n.82 (discussing the Church's opposition to the cash grab narrative surrounding Scientology's origin).

42. Horwitz, *supra* note 8, at 93 (quoting RUSSELL MILLER, *BARE-FACED MESSIAH: THE TRUE STORY OF L. RON HUBBARD* 148 (1987)).

43. WRIGHT, *supra* note 3, at 95–96.

44. Horwitz, *supra* note 8, at 95.

The spirituality element is emphasized in Scientology's Bridge to Total Freedom (the Bridge).<sup>45</sup> The Bridge to Total Freedom is a "chart that shows the gradations to spiritual betterment."<sup>46</sup> To improve in Scientology, one must complete certain actions or attain specific skills before the person can move up the Bridge.<sup>47</sup> Once a Scientologist completes each level set forth in the Bridge, that person is considered Clear.<sup>48</sup> People who are Clear are less susceptible to illnesses,<sup>49</sup> can move objects with their minds,<sup>50</sup> and at one point in time, the Church even claimed that Clears could cure cancer within their own bodies.<sup>51</sup>

To become Clear, a person must attend a specific number of auditing sessions pursuant to the Bridge's particular requirements for each level of Scientology.<sup>52</sup> Auditing is conducted by a trained auditor who operates an "electropsychometer" (otherwise referred to as an "E-meter").<sup>53</sup> The E-meter is similar to a lie detector in that it detects sweat or pressure from a person's hands through two electrical nodes that are held during the auditing session.<sup>54</sup> The auditor will ask questions to the person holding the nodes until a reading is detected by the E-meter.<sup>55</sup> A change in readings is believed to indicate a change in the person's subconscious.<sup>56</sup> Once a change is noted, the auditor will probe with questions until the person divulges enough information that the E-meter no longer registers any subconscious activity.<sup>57</sup> According to the Church, undergoing continuous auditing sessions allows people to discard the engrams that are holding them back and expand the capabilities of their minds.<sup>58</sup>

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45. See *What is the Bridge in Scientology?*, SCIENTOLOGY, <https://www.scientology.org/faq/backgroud-and-basic-principles/what-is-the-bridge-in-scientology.html> (last visited Oct. 12, 2021).

46. *Id.*

47. *Id.*

48. *How Does One Go Clear?*, SCIENTOLOGY, <https://www.scientology.org/faq/clear/how-does-one-go-clear.html> (last visited Oct. 12, 2021).

49. *Do Clears Get Colds and Get Sick?*, SCIENTOLOGY, <https://www.scientology.org/faq/clear/do-clears-get-colds-and-get-sick.html> (last visited Oct. 12, 2021).

50. WRIGHT, *supra* note 3, at 110.

51. See L. RON HUBBARD, *A HISTORY OF MAN 20* (1961) ("Cancer has been eradicated by auditing out conception and mitosis."). After the Food and Drug Administration (FDA) received complaints that Scientology was not healing physical ailments as promised, the FDA confiscated over 100 E-meters from Scientology. *United States v. Article or Device "Hubbard Electrometer"*, 333 F. Supp. 357, 360–61 (D.D.C. 1971). The FDA later released the E-meters back to the Church under the condition that a large disclaimer be affixed to the machine, reading "the literature [referring] to Dianetics [or] Scientology contains false and misleading claims of a medical or scientific nature," and it is a violation of the law for anyone to represent that the E-meter is "useful in the diagnosis, treatment[,] or prevention of any disease." *Id.* at 364–65.

52. Horwitz, *supra* note 8, at 96.

53. *Id.* at 98.

54. *Id.* Initially, the E-meter electrical nodes were manufactured from tin soup cans. *Id.*

55. *Id.*

56. *Id.*

57. See *The Auditing Session*, SCIENTOLOGY, <https://www.scientology.org/what-is-scientology/the-practice-of-scientology/the-auditing-session.html> (last visited Oct. 12, 2021).

58. See *id.*

Auditing can prove quite costly for Scientologists, and the Church considers its members' payments for auditing services as "donations."<sup>59</sup> "Scientologists are not required to tithe or make other donations" to the Church;<sup>60</sup> however, the only way to ever go Clear is to donate, and, in turn, receive the required auditing sessions.<sup>61</sup> Former Scientologists have reported that auditing sessions can cost up to \$1,000 per hour—depending on the person's location on the Bridge.<sup>62</sup> Ultimately, there are no formal membership requirements for joining the Church of Scientology.<sup>63</sup> People are simply accepted into the Church "for auditing on the basis of their interest in Scientology (and presumably their ability to pay for its benefits)."<sup>64</sup> Courts have acknowledged Scientology's give-and-take practices, even noting that "[o]ne of the tenets of Scientology is that anytime a person receives something, he must pay something back."<sup>65</sup>

As a result of the controversies surrounding this new ideology, the emergence of the Church of Scientology prompted many inquiries regarding what constitutes a religion.<sup>66</sup> Any discussion of whether Scientology is a protected religion under the First Amendment is beyond the scope of this Comment; this Comment operates under the conclusion that Scientology is in fact a religion that enjoys First Amendment protections. What this Comment will explore generally, however, is the concept that what constitutes a religion for First Amendment purposes may not constitute a religious organization for tax exemption purposes. The Supreme Court has recognized that "there is virtually no room for a 'constitutionally required exemption' on religious grounds from a valid tax law that is entirely neutral in its general application."<sup>67</sup> Therefore, if Scientology is unable to abide by the relevant statutory and common law requirements for tax exemption, its status as a religion protected under the First Amendment does not preclude the revocation of its status as a tax-exempt religious organization under § 501(c)(3).<sup>68</sup>

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59. *How are Churches of Scientology Supported Financially?*, SCIENTOLOGY, <https://www.scientology.org/faq/church-funding/church-funding.html> (last visited Oct. 12, 2021).

60. *Id.*

61. *See How Much Might a Scientologist Donate Before Achieving the State of Clear?*, SCIENTOLOGY, <https://www.scientology.org/faq/church-funding/how-much-for-state-of-clear.html> (last visited Oct. 12, 2021).

62. Horwitz, *supra* note 8, at 98 (citing Richard Behar, *Scientology: The Thriving Cult of Greed and Power*, TIME, May 6, 1991, at 50).

63. *Founding Church of Scientology of Wash., D.C. v. United States*, 409 F.2d 1146, 1152–53 (D.C. Cir. 1969).

64. *Id.*

65. *See Church of Scientology of Cal. v. Comm'r (Scientology I)*, 83 T.C. 381, 386 (1984), *aff'd*, 823 F.2d 1310 (9th Cir. 1987).

66. *See generally* Horwitz, *supra* note 8, at 93–94 (highlighting the controversy surrounding Scientology's legal status as a religion).

67. *United States v. Lee*, 455 U.S. 252, 263 (1982) (Stevens, J., concurring) (concerning social security tax).

68. *Id.*

*B. Criteria for Obtaining and Requirements for Maintaining § 501(c)(3)  
Status*

In an effort to recognize all of the benefits that charitable and religious organizations confer upon society, and to encourage the continuation of these activities, Congress extended tax exemption to organizations meeting certain charitable criteria.<sup>69</sup> The rationale behind this legislative decision is that because the organizations inherently confer public benefit, no justification exists for the government to tax them and spend those funds on public projects, when the organizations are already providing and funding public benefits on their own accord.<sup>70</sup> It is thus implied that for organizations to receive this tax exemption benefit, they must actually promote the public good.<sup>71</sup> “The sole beneficiary of the [organization’s] activities must be the public at large” to warrant tax exemption under § 501(c)(3).<sup>72</sup> However, tax exemption is recognized as a privilege, rather than a right.<sup>73</sup> Accordingly, an organization’s receipt of § 501(c)(3) status is not absolute, and it must continuously comport with specific requirements to receive and maintain the exemption.<sup>74</sup>

Under § 501(c)(3), “[c]orporations, and any community chest, fund, or foundation, organized and operated exclusively for religious . . . purposes” can obtain these tax benefits, provided specific criteria are met.<sup>75</sup> To qualify for exemption as a religious organization, a church must establish that it is organized and operated exclusively for religious or charitable purposes.<sup>76</sup> The organizational requirement is relatively simple, requiring only that the organization state the exempt purpose for which it was organized within its articles of organization.<sup>77</sup> The operational requirement is more complicated—courts have recognized a four-element test for determining whether a religious organization satisfies the operational requirement; three elements are statutorily derived, and one element emerges from common law.<sup>78</sup>

*I. Statutory Criteria*

The three statutory criteria for obtaining and maintaining tax exemption as a 501(c)(3) organization are as follows: First, the organization must engage

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69. *Harding Hosp., Inc. v. United States*, 505 F.2d 1068, 1071 (6th Cir. 1974).

70. *Church of Scientology of Cal. v. Comm’r (Scientology II)*, 823 F.2d 1310, 1316 (9th Cir. 1987).

71. *Presbyterian & Reformed Publ’g Co. v. Comm’r*, 743 F.2d 148, 153 (3d Cir. 1984).

72. *Scientology II*, 823 F.2d at 1316 (citing *Founding Church of Scientology v. United States*, 412 F.2d 1197, 1199 (Ct. Cl. 1969)).

73. *Christian Echoes Nat’l Ministry, Inc. v. United States*, 470 F.2d 849, 857 (10th Cir. 1972).

74. *Harding Hosp.*, 505 F.2d at 1071.

75. I.R.C. § 501(c)(3).

76. *Hall v. Comm’r*, 729 F.2d 632, 634 (9th Cir. 1984).

77. *Treas. Reg.* § 1.501(c)(3)-1(b).

78. *See, e.g., Scientology II*, 823 F.2d 1310, 1315 (9th Cir. 1987).

in activities that accomplish one or more of the exempt purposes enumerated in § 501(c)(3)—charitable, religious, educational, scientific, etc.<sup>79</sup> Second, the organization's earnings cannot inure to the benefit of officers or individuals in the organization.<sup>80</sup> Finally, the organization may not expend substantial resources to influence legislation or political campaigns.<sup>81</sup> For the purpose of this Comment, these criteria will hereinafter be referred to as the "Commercial Activity Requirement," the "Private Inurement Requirement," and the "Political Requirement," respectively.

Under the Commercial Activity Requirement, a church must be "organized and operated exclusively for religious . . . purposes."<sup>82</sup> A church may have nonreligious purposes, and so long as these are only incidental to its religious purpose, the church can maintain tax exemption.<sup>83</sup> For example, a church may engage in commercial activities—such as selling religious literature—provided the commercial sales are incidental to the church's primary religious purpose,<sup>84</sup> and the church pays the required unrelated business income tax from the profits generated by any unrelated commercial activity.<sup>85</sup> When the commercial activities and unrelated business income assume an independent importance and purpose within the church that supersedes the "exclusively religious purpose" required by § 501(c)(3), a religion's tax-exempt status could be in danger.<sup>86</sup>

Pursuant to the Private Inurement Requirement, if any portion of an organization's net earnings inure to the benefit of a private shareholder or individual of the organization—no matter what the purpose is—an organization's exemption status can be revoked.<sup>87</sup> Private inurement can occur in a variety of ways, though it most notably occurs when a portion of an organization's earnings are redirected to its officers or directors.<sup>88</sup> The amount or extent of the benefit conferred upon an individual is immaterial; thus, even if a conveyed benefit is relatively small, an organization can nonetheless lose its tax exemption status as a result of private inurement.<sup>89</sup>

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79. *Id.* (citing Treas. Reg. § 1.501(c)(3)-1(c)(1)).

80. *Id.* (citing Treas. Reg. § 1.501(c)(3)-1(c)(2)).

81. *Id.* (citing Treas. Reg. § 1.501(c)(3)-1(c)(3)).

82. I.R.C. § 501(c)(3).

83. *Christian Manner Int'l v. Comm'r*, 71 T.C. 661, 668 (1979); *Pulpit Res. v. Comm'r*, 70 T.C. 594, 602 (1978).

84. *See Scientology I*, 83 T.C. 381, 459 (1984), *aff'd*, 823 F.2d 1310 (9th Cir. 1987).

85. I.R.C. § 511(a)(2)(A).

86. *See Scientology I*, 83 T.C. at 459.

87. *See id.* at 491. In some cases, however, small amounts of private inurement will not result in total revocation of tax-exempt status. *See* I.R.C. § 4958. When private inurement is miniscule, an organization may be subject to intermediate sanctions, which allows the IRS to impose significant taxes on the organization's insider who received private inurement. *See id.*

88. *See Scientology I*, 83 T.C. at 491.

89. *Church of the Transfiguring Spirit, Inc. v. Comm'r*, 76 T.C. 1, 5 (1981); *Founding Church of Scientology v. United States*, 412 F.2d 1197, 1200 (1969).

Finally, the Political Requirement prohibits § 501(c)(3) organizations from intervening in or attempting to influence political campaigns and places restrictions on lobbying activities.<sup>90</sup> This stems from the notion that the government granted these organizations tax exemption so they could put greater effort into benefitting society, not so they could subsidize the campaigns of politicians or substantially shape legislation to fit their agendas.<sup>91</sup> If an organization's activities are markedly directed towards politics, rather than the community, the organization could risk revocation of its exemption status.<sup>92</sup>

## 2. The Common Law Requirement

The entire justification for granting tax exemption to charitable and religious organizations is that they improve society by conferring some public benefit.<sup>93</sup> It follows then that the same organization should not engage in illegal activities or violate established public policy.<sup>94</sup> When the government grants tax exemptions, all taxpayers are affected—this is why § 501(c)(3) organizations must serve and act in accordance with the public interest.<sup>95</sup> Accordingly, revocation of the exemption is ultimately warranted when an organization that otherwise comports with the statutory requirements of § 501(c)(3), engages in activities that are contrary to fundamental public policy.<sup>96</sup>

In *Bob Jones University v. United States*, the Supreme Court first held that a § 501(c)(3) organization could lose its tax exemption status if it engaged in activities that violated a fundamental national public policy.<sup>97</sup> In *Bob Jones*, two nonprofit universities maintained racially discriminatory admissions policies that disallowed the enrollment of students engaged in interracial relationships.<sup>98</sup> The Court determined that because racial equality was a burgeoning public policy in the United States, and the universities' actions explicitly contradicted that national objective, revocation of their tax exemption was warranted.<sup>99</sup> In explaining its holding, the Court pointed to the landmark decision of *Brown v. Board of Education*,<sup>100</sup> which “[signaled] an end to [the] era” of racial discrimination in schools.<sup>101</sup> The Court

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90. *Christian Echoes Nat'l Ministry, Inc. v. United States*, 470 F.2d 849, 852 (10th Cir. 1972).

91. *Id.* at 854.

92. *Id.* at 855–56.

93. *Bob Jones Univ. v. United States*, 461 U.S. 574, 580–81, 583 (1983).

94. *See generally id.* at 591 (linking the assertion that tax-exempt organizations should not violate public policy to case law and various Restatements reaching the same conclusion in the context of trusts).

95. *Id.* at 592.

96. *Id.*

97. *Id.* at 604–05.

98. *Id.* at 574.

99. *Id.* at 598.

100. *Id.* at 593 (citing *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954)).

101. *Id.* at 593.

elaborated further by recognizing a myriad of Supreme Court decisions, congressional acts, and executive orders, which, when taken together, illustrated “a firm national policy to prohibit racial segregation and discrimination in public education.”<sup>102</sup> Despite the existence of an underlying religious reason for the universities’ discriminatory policies, the Court found that such policies operated contrary to national public policy and failed to confer any public benefit, as required to fulfill the “charitable” requirement of § 501(c)(3).<sup>103</sup>

The Court was adamant that the revocation in no way infringed upon the universities’ First Amendment right to freely practice religion.<sup>104</sup> The government did not prohibit the universities from practicing their religious tenets by enforcing racially discriminatory policies;<sup>105</sup> the government merely took away the universities’ tax exemption statuses because they were engaged in racial discrimination, which the country was adamantly trying to constrain.<sup>106</sup> The Court further acknowledged that 501(c)(3) exemption is not constitutionally guaranteed for religious organizations.<sup>107</sup> After all, tax exemption is a privilege, not a right.<sup>108</sup>

Other courts have declined to extend the holding in *Bob Jones* to encompass any public policy other than race, encouragement of civil discourse, and involvement in illegal activity.<sup>109</sup> Many suspect the reason for its narrow application stems from “its lack of a clearly defined source of ‘established public policy,’”<sup>110</sup> and critics often remark “that the public policy doctrine places too much discretion in a regulatory agency.”<sup>111</sup> While these concerns may be well founded, this Comment will later discuss the necessity of expanding the *Bob Jones* holding to incorporate another fundamental public policy that has existed since the very outset of this nation’s sovereignty.<sup>112</sup>

To summarize, organizations must satisfy four operational elements to obtain and maintain tax exemption status under § 501(c)(3): The Commercial Activity, Private Inurement, Political, and Public Policy Requirements.<sup>113</sup>

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102. *Id.* at 593–95.

103. *Id.* at 595–96.

104. *Id.* at 603–04.

105. *Id.* at 604.

106. *Id.*

107. *Id.*

108. *Christian Echoes Nat’l Ministry v. United States*, 470 F.2d 849, 857 (10th Cir. 1972).

109. Nicholas A. Mirkay, *Losing Our Religion: Reevaluating the Section 501(c)(3) Exemption of Religious Organizations That Discriminate*, 17 WM. & MARY BILL RTS. J. 715, 720 (2009).

110. *Id.*

111. *Id.* at 720–21.

112. *See infra* Part IV (arguing that Scientology’s suppression of free speech disqualifies them from § 501(c)(3) status).

113. *See, e.g., Scientology II*, 823 F.2d 1310, 1315 (9th Cir. 1987); *Bob Jones Univ. v. United States*, 461 U.S. 574, 604–05 (1983).

Failure to comply with even one of the four operational elements could result in revocation of an organization's tax exemption status.<sup>114</sup>

### C. Scientology's War with the IRS

Between 1953 and 1954, Hubbard incorporated at least five Scientology churches as nonprofit organizations: the Church of American Science; the Church of Spiritual Engineering; the Church of Scientology; the Church of Scientology of California, a; and the Founding Church of Scientology of Washington, D.C.<sup>115</sup> In 1957, the IRS recognized some of these corporations as religious organizations under § 501(c)(3) of the Internal Revenue Code and concurrently granted them tax exemption.<sup>116</sup> However, this privilege was short lived, and, in 1967, the IRS revoked Scientology's tax-exempt status altogether.<sup>117</sup>

The IRS's "letter of revocation stated that the Church was engaged in 'business for profit,'" was operated such that a portion of its earnings inured to a private individual, and served private rather than public interests.<sup>118</sup> The IRS's decision was largely centered around the discovery that substantial sums of Church earnings inured to the private benefit of L. Ron Hubbard.<sup>119</sup> Thereafter, the IRS instructed the Church to file its federal income tax returns.<sup>120</sup> The Church refused to comply with the IRS's instructions, and instead of filing income tax returns for the required years, it submitted Form 990 information returns.<sup>121</sup> After auditing the Church a few years later, the IRS dispatched a Notice of Deficiency, which covered the years 1970, 1971, and 1972.<sup>122</sup> The Church owed \$1,150,458.87 in delinquent taxes and an additional \$287,614.71 in late filing penalties.<sup>123</sup> From this point on, the Church of Scientology was determined to get its tax exemption status back—proving along the way that it would employ any means necessary to achieve this objective.<sup>124</sup>

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114. *Harding Hosp., Inc. v. United States*, 505 F.2d 1068, 1072 (6th Cir. 1974).

115. WRIGHT, *supra* note 3, at 101.

116. *See Scientology I*, 83 T.C. 381, 382 (1984), *aff'd*, 823 F.2d 1310 (9th Cir. 1987).

117. *Id.*

118. *Scientology II*, 823 F.2d at 1312.

119. *See Scientology I*, 83 T.C. at 389.

120. *Scientology II*, 823 F.2d at 1312.

121. *Id.* The IRS Form 990 is a required information return that all nonprofit organizations—except churches—must file with the IRS on a yearly basis. John Montague, *The Law and Financial Transparency in Churches: Reconsidering the Form 990 Exemption*, 35 CARDOZO L. REV. 203, 205 (2013). Form 990s include information regarding organizations' income, revenue, assets, liabilities, and compensation of directors and officers. *Id.* at 205 n.2.

122. *Scientology II*, 823 F.2d at 1312.

123. *Id.*

124. *See generally* Frantz, *supra* note 1.

The Church stonewalled the IRS, refusing to pay the taxes due and claiming that revocation of its tax exemption was unlawful.<sup>125</sup> In addition to withholding the amounts demanded by the IRS, the Church also instituted an all-out retaliation against the government agency.<sup>126</sup> In 1973, the Church embarked on a mission to get rid of all “false and secret files” that the government held regarding the religion claiming that “[a]ttack is necessary to an effective defense.”<sup>127</sup> To implement this program, Scientologists “infiltrated” the Department of Justice and the IRS by breaking into the agencies, copying their Scientology-related documents, and bugging offices with electronic listening devices.<sup>128</sup> Despite the Church’s efforts to root out the alleged false and secret files that these government agencies possessed, the scheme was uncovered in 1977, and L. Ron Hubbard’s wife, along with ten other Scientologists, were convicted on a variety of federal charges.<sup>129</sup>

Many people attribute these actions to the mandates under the Fair Game Policy.<sup>130</sup> The Fair Game Policy was enacted in 1965 under Hubbard’s claim that enemies of the Church of Scientology may “be deprived of property or injured by any means by any Scientologist without any discipline of the Scientologist. [They] [m]ay be tricked, sued or lied to or destroyed.”<sup>131</sup> According to the Church, the Fair Game Policy was cancelled back in 1968 “because it was susceptible to misinterpretation and misuse.”<sup>132</sup> However, many former Scientologists testify that the Fair Game Policy lingers on with equal force—even in modern day.<sup>133</sup> Furthermore, the Church’s current actions and practices indicate that the language of the Fair Game Policy still controls how Scientologists treat those whom they deem a threat to the religion.<sup>134</sup>

To further its goal of regaining tax exemption, the Church established and financed the National Coalition of IRS Whistleblowers, which attempted to discredit the agency and its top executives.<sup>135</sup> This coalition’s main goal

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125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.* (quoting L. Ron Hubbard’s Fair Game Policy Letter from Ron. L. Hubbard (Oct. 21, 1968)); Tony Ortega, *Leah Remini Told You About Scientology’s ‘Fair Game’—and Here’s the Worst Example of It*, THE UNDERGROUND BUNKER (Dec. 8, 2016), <https://tonyortega.org/2016/12/08/leah-remini-told-you-about-scientologys-fair-game-and-heres-the-worst-example/>.

132. *What Does the Term “Fair Game” Refer to?*, SCIENTOLOGY NEWSROOM, <https://www.scientologynews.org/faq/what-does-the-term-fair-game-refer-to.html> (last visited Oct. 12, 2021).

133. *See, e.g.*, Mike Rinder, *Scientology Fair Game*, MIKE RINDER’S BLOG (July 30, 2019), <https://www.mikerindersblog.org/scientology-fair-game/> (“The practice of Fair Game is alive and well in [S]cientology.”).

134. *See infra* Section IV.B (explaining the intimidating tactics the Church continues to use despite its contentions that the Fair Game policy is no longer employed).

135. Thomas C. Tobin & Joe Childs, *Part 1 – Scientology: The Truth Rundown*, TAMPA BAY TIMES (Oct. 23, 2019), <https://www.tampabay.com/special-reports/2019/10/17/scientology-the-truth-rundown/>.

was to keep pressure on the IRS.<sup>136</sup> Former Church executives admitted that they “didn’t even think about the money” it would cost the Church to continue the coalition—they just “did whatever [they] needed to do.”<sup>137</sup> The Church obtained IRS records under the Freedom of Information Act and published stories of IRS improprieties in a Scientology magazine.<sup>138</sup> These stories contained a variety of allegations, including that taxpayers funded IRS officials’ lavish retreats, which sowed a seed of distrust in the agency within the minds of the general population.<sup>139</sup>

During this time, the Church and its members filed countless lawsuits against the IRS, accusing them of discriminating against Scientology and committing illegal activities against the Church.<sup>140</sup> At one time, more than fifty lawsuits were pending against the IRS and its top officials.<sup>141</sup> These plaintiffs were not seeking nominal recoveries either; one suit even alleged \$120 million in damages.<sup>142</sup>

By this point, L. Ron Hubbard had passed away, and David Miscavige had retained control as the leader of the Church of Scientology.<sup>143</sup> Many believe that Miscavige—aware that Scientology’s persistent attacks were overwhelming the IRS—saw an opportunity and took it.<sup>144</sup> In 1991, Miscavige entered the IRS building in Washington D.C. and asked to speak to the Commissioner, Fred T. Goldberg.<sup>145</sup> Following this meeting, the IRS formed a special team that reevaluated the Church’s tax exemption status, and by August of 1993, the IRS reinstated Scientology’s tax exemption for *all* of its organizations in exchange for the Church and its members dropping all of the pending lawsuits.<sup>146</sup> In addition, the IRS also agreed to allow Scientologists to deduct payments for religious services—such as auditing—from their income taxes as charitable contributions.<sup>147</sup> This resolution directly contradicted the Supreme Court’s holding in *Hernandez v. Commissioner*, decided only four years earlier, which prohibited Scientologists from deducting their auditing costs from their income taxes as charitable contributions.<sup>148</sup>

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136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. Frantz, *supra* note 1.

141. *Id.*

142. Henry Weinstein, *Scientologists Sue 17 IRS Officials*, L.A. TIMES (Aug. 13, 1991), <https://www.latimes.com/archives/la-xpm-1991-08-13-mn-861-story.html>.

143. Frantz, *supra* note 1.

144. *Id.*

145. *Id.*

146. *Id.*

147. *Church of Scientology IRS Tax Exemption*, SCIENTOLOGY (Oct. 1, 1993), <http://www.Scientologyreligion.org/landmark-decisions/church-of-scientology-irs-tax-exemption.html>.

148. *Hernandez v. Comm’r*, 490 U.S. 680, 703 (1989).

Following this momentous turnaround, the Church was required to submit new applications for § 501(c)(3) exemption status.<sup>149</sup> The analysts assigned to review these applications attest that they were “instructed not to address issues like whether the Church was engaged in too much commercial activity or whether its activities provided undue private benefit to its leaders”—procedures which they admitted were atypical.<sup>150</sup>

On October 8, 1993, David Miscavige addressed the Church’s congregation, declaring: “The war is over!”<sup>151</sup> The proud announcement was met with cheers and applause from the 10,000 Scientologists in attendance.<sup>152</sup> However, this announcement did not receive a similar reaction from the general public of non-Scientologists, and people were more confused than ever regarding the IRS’s sudden and inexplicable turnaround on Scientology’s tax exemption status.<sup>153</sup> The IRS only increased suspicion and criticism by refusing to make public the terms of its agreement with the Church public, thus failing to provide sufficient reasoning to the general population to support the agency’s positional shift.<sup>154</sup> As a result, many question the validity of the IRS’s decision and continue to demand another investigation into the Church’s § 501(c)(3) compliance.<sup>155</sup>

This Comment does exactly that—assesses the Church’s current practices and evaluates whether these activities comport with the requirements religious organizations must satisfy under § 501(c)(3). The following sections will provide modern examples of Church activities that are exceptionally similar to that which caused Scientology to lose its tax exemption in 1967.<sup>156</sup> Part III will delve deeper into the Church’s Bridge to Total Freedom and will examine whether this spiritual path’s purpose is to further Scientologists’ religious journey, or whether it is simply a commercial tactic to increase Church revenue. Part IV will consider whether the Church’s Fair Game Policy is still in effect today, and the consequences this policy has on society’s ability to speak and express individual opinions without repercussions. Finally, Part V will explore various reports of private inurement in the public domain that raise substantial questions regarding § 501(c)(3) compliance.

The evidence presented in the coming sections will not differ significantly from what has already been discussed, though that is essentially the entire premise of the argument—the Church never actually ceased the

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149. Frantz, *supra* note 1.

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. See Horwitz, *supra* note 8, at 109–10.

156. See discussion *infra* Parts III–V (discussing whether the Bridge to Total Freedom is a business model or a path to spiritual enlightenment and whether the action was an unfair suppression of free speech).

activities that violated § 501(c)(3) requirements, resulting in the initial revocation of its tax exemption status. Accordingly, the following sections provide justifications for the IRS to reexamine the Church's acquiescence to § 501(c)(3)'s operational requirements. Specifically, the IRS should investigate each individual Scientology organization's fulfillment of the Commercial Activity, Public Policy, and Private Inurement Requirements—as freely available information points towards noncompliance with these conditions of tax exemption.

### III. THE BRIDGE TO TOTAL FREEDOM: PATH TO SPIRITUAL ENLIGHTENMENT OR WELL-CRAFTED BUSINESS MODEL?

To maintain tax-exempt status, a charitable or religious organization must be organized and operated exclusively for the exempt purposes set forth in § 501(c)(3).<sup>157</sup> Thus, if the IRS classifies the organization as a religious organization, it must primarily engage in religious activities. While courts have recognized that some commercial activity is permitted within these § 501(c)(3) churches, these commercial activities must be incidental to their overall religious purpose,<sup>158</sup> and an unrelated business income tax must be paid for profits generated through unrelated commercial activities.<sup>159</sup> Courts will often begin their inquiry by asking whether the organization's resolution to engage in commercial activities is related to its tax-exempt purpose, or whether the commercial activity points towards an underlying goal of making a profit.<sup>160</sup>

The Church of Scientology earns an enormous profit off of the very services its parishioners must pay for and complete to move up the Bridge.<sup>161</sup> The entire goal of Scientology is to climb the Bridge until the member reaches Clear—which allegedly bestows heightened mental capabilities upon the person.<sup>162</sup> To move up each level, Scientologists must purchase the essential books of Scientology, take religious courses, and sit through endless auditing sessions.<sup>163</sup> While this may seem related to the Church's religious purpose at first glance, once one actually delves deeper into the specific cost of each item and service needed to move up the Bridge, it becomes clear how expensive—and heavily commercial—Scientology truly is.

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157. I.R.C. § 501(c)(3).

158. *Christian Manner Int'l v. Comm'r*, 71 T.C. 661, 668 (1979); *Pulpit Res. v. Comm'r*, 70 T.C. 594, 602 (1978).

159. I.R.C. § 511(a)(2)(A).

160. *B.S.W. Grp., Inc. v. Comm'r*, 70 T.C. 352, 357 (1978).

161. *See infra* note 171 and accompanying text (detailing the total amount an average Scientologist spends to go Clear).

162. SCIENTOLOGY, *supra* note 48.

163. *Id.*

*A. Auditing Expenses*

The fact that a § 501(c)(3) organization engages in commercial or business activity does not automatically disqualify that organization from tax exemption.<sup>164</sup> Commercial or business activity is permitted, provided the activity furthers the organization's exempt purpose.<sup>165</sup> When determining whether an organization's commercial activities serve a purpose unrelated to its tax exemption, "[f]actors such as the particular manner in which an organization's activities are conducted, the commercial hue of those activities, and the existence and amount of annual or accumulated profits are relevant evidence of a forbidden predominant purpose."<sup>166</sup> The existence of any one of these factors would support a conclusion that a tax-exempt organization was not operating exclusively for its exempt purpose.<sup>167</sup>

While an organization will not automatically lose its tax exemption status when its primary activity constitutes a business, "when it conducts a business with an apparently commercial character as its primary activity, 'that fact weighs heavily against exemption.'"<sup>168</sup> Thus, a tax-exempt organization should be able to demonstrate that its own services are not in competition with other commercial businesses, as competition with commercial businesses "is strong evidence of the predominance of nonexempt commercial purposes."<sup>169</sup>

The most prominent expense that Scientologists incur is for the mandatory auditing sessions.<sup>170</sup> It is estimated that a Scientologist spends approximately \$400,000 in the process of going Clear<sup>171</sup>—a momentous financial expense for the average American who makes around \$52,000 per year.<sup>172</sup> The sheer price of these auditing sessions—costing upwards of \$1,000 for a single session in some cases<sup>173</sup>—illustrates that their purpose is profitability, rather than spiritual enhancement. Moreover, despite the Church's claim that Clears are akin to supreme human beings, the Church

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164. *B.S.W. Grp.*, 70 T.C. at 357.

165. *Id.*

166. *Id.* at 358.

167. *Scientology I*, 83 T.C. 381, 475 (1984), *aff'd*, 823 F.2d 1310 (9th Cir. 1987).

168. *Living Faith, Inc. v. Comm'r*, 950 F.2d 365, 373 (7th Cir. 1991) (quoting *B.S.W. Grp.*, 70 T.C. at 359).

169. *B.S.W. Grp.*, 70 T.C. at 358.

170. Jim Newton, *IRS Scientology End Their 'Wars'—Church and Its Corporations Are Granted Tax-Exempt Status*, SEATTLE TIMES (Oct. 13, 1993), <https://archive.seattletimes.com/archive/?date=19931013&slug=1725872>.

171. *Id.*

172. Jessica Semega et al., *Income and Poverty in the United States: 2019*, U.S. CENSUS BUREAU (Sept. 15, 2020), <https://www.census.gov/library/publications/2020/demo/p60-270.html>.

173. Horwitz, *supra* note 8, at 98 (citing Behar, *supra* note 62).

still insists that parishioners continue to pay for and attend auditing sessions even after they become Clear.<sup>174</sup>

These required auditing expenses are not related to Scientology's § 501(c)(3) purpose as a religious organization. In fact, the tax court explicitly noted that it found evidence of Scientology's commercial purpose "[p]ractically everywhere."<sup>175</sup> The tax court acknowledged that the Church's "goal of making money permeated virtually all of [Scientology's] activities—its services, its pricing policies, its dissemination practices and its management decisions."<sup>176</sup> The most dramatic indicator that Scientology was operated for a commercial purpose, rather than a religious one, was that the Church sold virtually all of its important religious services and products.<sup>177</sup>

Scientology requires a significant amount of auditing to move up the Bridge, and it is impossible to advance in the religion without completing the required courses and auditing sessions.<sup>178</sup> No other modern religion with a congregation size comparable to that of the Church of Scientology mandates recurring payments to merely participate;<sup>179</sup> yet, Scientology's entire foundation and religious ideology is built upon these required payments from parishioners.<sup>180</sup> While the services provided are related to the religion itself, "the overall manner in which they [are] provided evidences a commercial purpose" shielded under the guise of religious activity.<sup>181</sup>

While Scientology categorizes payments for auditing sessions as "fixed donations," it is evident that they are not donations at all, but rather payments for services rendered by the Church.<sup>182</sup> Scientology even shows concern regarding its profits by implementing policies that prohibit its members from both rendering services for free and reducing prices when a Scientologist cannot pay full price.<sup>183</sup> However, the Church occasionally runs promotions for bulk auditing session sales and increases the number of sessions if parishioners pay for all of them in advance.<sup>184</sup> This business model is virtually identical to that employed by counseling services and for-profit self-

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174. *If Clears No Longer Have a Reactive Mind, Why Do They Still Need to Participate in Auditing?*, SCIENTOLOGY, <https://www.scientology.org/faq/clear/if-clears-no-longer-have-a-reactive-mind-why-do-they-need-auditing.html> (last visited Oct. 12, 2021).

175. *Scientology I*, 83 T.C. 381, 475 (1984), *aff'd*, 823 F.2d 1310 (9th Cir. 1987).

176. *Id.* at 476.

177. *Id.*

178. SCIENTOLOGY, *supra* note 45.

179. *Scientists' Donations and Church of Scientology Financial Practices*, STAND LEAGUE, <https://www.standleague.org/resources/whitepapers/scientologists-donations-and-church-of-scientology-financial-practices.html> (last visited Oct. 12, 2021).

180. SCIENTOLOGY, *supra* note 48.

181. *Scientology I*, 83 T.C. at 477.

182. *Id.* at 478.

183. *Id.* While Scientology does offer auditing discounts for employees, SCIENTOLOGY, *supra* note 61, the Church also implements a "freeloader debt", in which staff members who attempt[] to leave the Church [are] presented with a bill for the difference between the full price for Church courses or auditing and the discounted rate paid by staff members." Horwitz, *supra* note 8, at 107.

184. *Scientology I*, 83 T.C. at 478.

help programs which require fixed payments for their services and offer occasional promotions to increase awareness and interest in their enterprise.<sup>185</sup> In instances where prices are set competitively with surrounding businesses, the “lack of below-cost pricing militates against granting an exemption.”<sup>186</sup>

With such a strict price model, the Church’s auditing sessions are easily distinguishable from self-help programs offered by other nonprofit organizations.<sup>187</sup> For example, Yale University’s<sup>188</sup> most popular online course, “The Science of Well-Being,” claims to produce similar results to those a Scientologist may attain through auditing sessions.<sup>189</sup> Participants in this online course are taught “exercises known to improve psychological health, such as improving sleep patterns, developing exercise routines, and practicing meditation.”<sup>190</sup> In total, the course takes nineteen hours (an estimated ten weeks) to complete.<sup>191</sup> The total cost for this course: free.<sup>192</sup> Participants only have to pay a \$49 fee if they want a certificate of completion for the course, but they receive full access to all of the materials necessary to complete the course without paying a dime.<sup>193</sup> With 3.4 million enrollees since its debut, “The Science of Well-Being” is not only an example of a self-help course offered by another nonprofit that reportedly produces comparable results to those achieved through auditing sessions, it is also an example of a substantially different price model employed by a tax-exempt organization, proving to be a much cheaper alternative to the costly auditing sessions required in Scientology.<sup>194</sup>

Generally, for secular organizations organized for the purpose of providing therapy services to attain tax exemption under § 501(c)(3), they would need to primarily “provide low-fee or pro bono therapy services to the financially needy or the distressed.”<sup>195</sup> For example, Alcoholics Anonymous is one of the most well-known § 501(c)(3) organizations in the country.<sup>196</sup>

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185. *Id.* at 479.

186. *Living Faith, Inc. v. Comm’r*, 950 F.2d 365, 373 (7th Cir. 1991).

187. *Scientology I*, 83 T.C. at 478; Frequently Needed Yale Facts, IT’S YOUR YALE, <https://your.yale.edu/research-support/office-sponsored-projects/resources/frequently-needed-yale-facts> (last visited Oct. 12, 2021).

188. Yale University also enjoys tax exemption under § 501(c)(3). IT’S YOUR YALE, *supra* note 187.

189. Bill Hathaway, *How to Gain a Sense of Well-Being, Free and Online*, YALENEWS (Apr. 14, 2021), <https://news.yale.edu/2021/04/14/how-gain-sense-well-being-free-and-online>.

190. *Id.*

191. Mara Leighton, *3 Things I Loved About The Science of Well-Being, The Free Online Version of Yale’s Most Popular Class Ever*, BUS. INSIDER (July 16, 2021, 12:32 PM), <https://www.businessinsider.com/coursera-yale-science-of-wellbeing-free-course-review-overview>.

192. *Id.*

193. *Id.*

194. *See id.*

195. Ann Tran, *The Basics of Forming a Non-Profit Counseling Corporation*, THE THERAPIST 3 (Nov./Dec. 2009), <https://www.camft.org/Portals/0/PDFs/articles/The-Basics-Forming-Non-Profit-Counseling-Corp.pdf?ver=2019-05-23-164608-750>.

196. *See Alcoholics Anonymous*, CHARITY NAVIGATOR, <https://www.charitynavigator.org/ein/0431>

Alcoholics Anonymous is a secular nonprofit that is entirely self-supporting, as the program does not require participants to pay any dues or fees.<sup>197</sup> In contrast, traditional commercial therapy services that charge on a per-visit basis and have no charitable purpose, would not receive tax exemption under § 501(c)(3).<sup>198</sup>

When comparing Scientology's price model for auditing sessions to the price model of for-profit therapy services, it becomes much harder to distinguish the two.<sup>199</sup> Due to their continuous nature, therapy sessions could be deemed a more appropriate alternative for auditing sessions than the short-term self-help course mentioned above.<sup>200</sup> Further, therapy services are often billed on a per-visit basis rather than sold as a packaged course.<sup>201</sup> While there is no set industry standard for the price of therapy, mental health professionals generally charge "\$75 to \$150 per 45-minute session."<sup>202</sup> If you were to meet with your therapist weekly for all fifty-two weeks of the year, your annual expenditures could range from \$3,900 to \$7,800 if you are paying out-of-pocket.<sup>203</sup> Even on the higher end of the scale, therapy prices are comparable to—if not less than—the total expenses that the average Scientologist incurs for auditing sessions each year.<sup>204</sup> Moreover, many insurance plans will cover some portion of therapy costs which reduces the out-of-pocket expenses even further for those who choose therapy over auditing.<sup>205</sup> Accordingly, Scientology's auditing prices are far more comparable to those set by the Church's secular commercial counterparts in the counseling industry than those set by other nonprofit organizations for similar introspective self-help courses.

These commercial activities are all evidence that the tax court relied upon in upholding the IRS's revocation of Scientology's tax exemption status in 1967.<sup>206</sup> Nothing has changed since then with respect to the Church's required auditing sessions, nor with the sessions' steep prices.<sup>207</sup> While auditing sessions bring in significant sums of money for the Church, sales of

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67168 (last visited Oct. 12, 2021).

197. *If You are a Professional*. . . , ALCOHOLICS ANONYMOUS, [https://www.aa.org/pages/en\\_US/if-you-are-a-professional](https://www.aa.org/pages/en_US/if-you-are-a-professional) (last visited Oct. 12, 2021).

198. See Tran, *supra* note 195.

199. *Id.*

200. Nina Stoller-Lindsey, *How Much Does Therapy Cost, and How Do You Pay For It?*, NW. MUT. (May 22, 2017), <https://www.northwesternmutual.com/life-and-money/how-much-does-therapy-cost-and-how-do-you-pay-for-it/>.

201. *Id.*

202. *Id.*

203. See generally *id.* (computed by multiplying \$75 and \$150 by 52, respectively).

204. See Newton, *supra* note 170; see also Horwitz, *supra* note 8, at 98 (citing Behar, *supra* note 62).

205. See Corey Whelan, *How to Know If Your Insurance Covers Therapy*, HEALTHLINE (Sept. 30, 2020), <https://www.healthline.com/health/does-insurance-cover-therapy>.

206. See *Scientology I*, 83 T.C. 381, 475–76 (1984), *aff'd*, 823 F.2d 1310 (9th Cir. 1987).

207. See discussion *supra* Section III.B (detailing the current auditing procedures and prices).

religious literature and pre-recorded lectures also comprise a substantial amount of Scientology's gross income.<sup>208</sup>

### B. Books and Other Required Religious Materials

The Church considers the religious scripture to be all “written and recorded spoken words of L. Ron Hubbard on the subject of Scientology.”<sup>209</sup> The scripture is comprised of “tens of millions of words, including hundreds of books, scores of films and more than 3,000 recorded lectures.”<sup>210</sup> With such a vast number of sources claimed as religious scripture, obtaining even a few of these materials could prove to be quite expensive.<sup>211</sup>

For example, the ten fundamental books in Scientology tout a packaged purchase price of \$175.<sup>212</sup> This is not a one-time purchase either—former Scientologists have claimed that the Church will occasionally update the books, which then requires members to repurchase the latest version of the texts.<sup>213</sup> The Scientology website also sells a beginning audiobooks package for \$255,<sup>214</sup> and six different books on film for \$25 each.<sup>215</sup> In addition to the books, audiobooks, and books on film, the store offers twenty-six “Classics Lectures” at \$15 each, for a total of \$390.<sup>216</sup> Accordingly, if a new Scientologist wishes to purchase physical copies of all of the beginning books and audiobooks, as well as all of the lectures available on the website, it would cost \$565 before taxes just to obtain a portion of the scripture of Scientology.<sup>217</sup>

Compare this to many of the larger denominations of Christianity, for example, in which the only required religious text is the Christian Bible—

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208. See *Scientology I*, 83 T.C. at 478. Because the Church is exempt from filing Form 990s, exact amounts that the Church generates through the sale of these services and products are not available. See *supra* note 121 and accompanying text (explaining that churches do not have to file a Form 990).

209. *Does Scientology Have a Scripture?*, SCIENTOLOGY, <https://www.scientology.org/faq/background-and-basic-principles/does-scientology-have-a-scripture.html> (last visited Oct. 12, 2021).

210. *Id.*

211. *See id.*

212. *The Beginning Books Package*, SCIENTOLOGY, <https://www.scientology.org/store/item/beginning-books-package.html> (last visited Oct. 12, 2021).

213. Tony Ortega, “Tom Cruise Worships David Miscavige Like a God”: *The John Brousseau Story, Part Two*, THE VILLAGE VOICE (July 29, 2012), <https://www.villagevoice.com/2012/07/29/tom-cruise-worships-david-miscavige-like-a-god-the-john-brousseau-story-part-two/> (“Insisting that there had been transcription problems with L. Ron Hubbard’s early Dianetics and Scientology books and lectures of the 1950s and 1960s, Miscavige had them republished and asked every Church member to purchase multiple sets, at up to \$3,000 a set. It was hard not to see it . . . as a cash grab[.]”).

214. *Beginning Audiobooks*, SCIENTOLOGY, <https://www.scientology.org/store/category/beginning-audiobooks.html> (last visited Oct. 12, 2021).

215. *Books on Film*, SCIENTOLOGY, <https://www.scientology.org/store/category/books-on-film.html> (last visited Oct. 12, 2021).

216. *Classics Lectures*, SCIENTOLOGY, <https://www.scientology.org/store/category/classics-lectures.html> (last visited Oct. 12, 2021).

217. *Id.*; *Beginning Books*, SCIENTOLOGY, <https://www.scientology.org/store/category/beginning-books.html> (last visited Oct. 12, 2021); SCIENTOLOGY, *supra* note 214.

costing between \$10 and \$50 depending on the style and quality.<sup>218</sup> Further, there are many ways to access the Bible for free; oftentimes, churches will gift Bibles to new members or visitors, or alternatively, there are a multitude of Bible applications on the Apple App Store that are free and are easily accessible to anyone with a smart phone or tablet.<sup>219</sup> Finally, Bibles are often sold by bookstores or online retailers—not by the Christian church itself.<sup>220</sup> Accordingly, most Bible purchases are not actually transactions between the Christian church and its members, thus eradicating the very commercial transactions which form the foundation of the Church of Scientology.<sup>221</sup>

Further, the tax court noted that “[w]here prices are fixed to return a profit,” this can be used as “some evidence of a commercial purpose.”<sup>222</sup> The tax court found that the minimum price of Scientology books was five times the cost; therefore, even if the Church ran a promotion on its religious literature, it would still stand to make a substantial profit.<sup>223</sup> In addition to these religious texts and lectures, Scientologists must also complete certain courses to supplement the auditing sessions and to move up the Bridge.<sup>224</sup> These courses generally cost around \$650 each and have a demanding time requirement.<sup>225</sup> Some courses even require that a member study from 9 a.m. to 10 p.m., seven days per week to successfully complete the course.<sup>226</sup>

When upholding the revocation of Scientology’s § 501(c)(3) status, the tax court acknowledged that Scientology’s commercial activities assumed an independent importance and purpose that superseded its charitable religious purpose.<sup>227</sup> The court noted that “by [Scientology’s] own admission, five of its branch churches earned between 73 and 100 percent of their income from the sale of [religious services, literature, and artifacts.]”<sup>228</sup> Furthermore, the Church “described its activities in highly commercial terms, calling

218. See *The Bible Store*, AMAZON, [https://www.amazon.com/b/ref=s9\\_acsd\\_hfnv\\_hd\\_bw\\_b3CE\\_ct\\_x\\_ct00?node=12059&pf\\_rd\\_m=ATVPDKIKX0DER&pf\\_rd\\_s=merchandised-search-11&pf\\_rd\\_r=W6P9W7K92N53K0ARJ9B5&pf\\_rd\\_t=101&pf\\_rd\\_p=9db63463-2574-5705-a510-20bbb9127080&pf\\_rd\\_i=12290](https://www.amazon.com/b/ref=s9_acsd_hfnv_hd_bw_b3CE_ct_x_ct00?node=12059&pf_rd_m=ATVPDKIKX0DER&pf_rd_s=merchandised-search-11&pf_rd_r=W6P9W7K92N53K0ARJ9B5&pf_rd_t=101&pf_rd_p=9db63463-2574-5705-a510-20bbb9127080&pf_rd_i=12290) (last visited Oct. 12, 2021).

219. See generally iTunes Preview, APPLE, [apps.apple.com/us/genre/ios-books/id6018](https://apps.apple.com/us/genre/ios-books/id6018) (last visited Oct. 12, 2021).

220. See, e.g., AMAZON, *supra* note 218; *Bibles & Bible Studies*, BARNES & NOBLE, [https://www.barnesandnoble.com/b/books/christianity/bibles-bible-studies/\\_/N-29Z8q8Z17ft](https://www.barnesandnoble.com/b/books/christianity/bibles-bible-studies/_/N-29Z8q8Z17ft) (last visited Oct. 12, 2021) (selling a wide variety of Bibles at various price points).

221. While many Christian churches sell numerous other religious resources in addition to the Bible, these resources are oftentimes not considered required scripture; in contrast, Scientology maintains that *all* of its religious texts and lectures available for purchase are indeed part of the essential scripture of the Church. SCIENTOLOGY, *supra* note 209.

222. *Scientology I*, 83 T.C. 381, 477 (1984), *aff’d*, 823 F.2d 1310 (9th Cir. 1987).

223. *Id.* at 478.

224. SCIENTOLOGY, *supra* note 48.

225. Jethro Nededog, *How Scientology Costs Members Up to Millions of Dollars, According to Leah Remini’s Show*, BUS. INSIDER (Dec. 14, 2016, 2:26 PM), <https://www.businessinsider.com/scientology-costs-leah-remini-recap-episode-3-2016-12>.

226. *Id.*

227. *Scientology I*, 83 T.C. at 459.

228. *Id.* at 459–60.

parishioners, ‘customers’; missions, ‘franchises’; and churches, ‘organizations.’”<sup>229</sup> Scientology also enacted orders that explicitly dictated that the purpose of certain offices was to “MAKE MONEY. \* \* \* MAKE MONEY. \* \* \* MAKE MORE MONEY. \* \* \* MAKE OTHER PEOPLE PRODUCE SO AS TO MAKE MONEY.”<sup>230</sup>

While Scientology may have altered its terminology so as to reduce the usage of commercial vocabulary, the core requirement that parishioners must purchase services and items from the Church to improve their spiritual standing remains the foundation of the entire religion.<sup>231</sup> Scientology has not reformed its practices in any way since the tax court’s holding; the Church still requires its parishioners to purchase auditing sessions and L. Ron Hubbard’s books and lectures.<sup>232</sup> The Bridge to Total Freedom is essentially a business model, requiring hundreds of thousands of dollars from each parishioner to attain Clear, and even after Scientologists reach this level, they still must continue to attend auditing sessions and give money to the Church through purchasing (and in some cases repurchasing) religious scriptures.<sup>233</sup>

Many former Scientologists who actually attained Clear have come forward and admitted that they were not able to cure cancer or move things with their minds as Scientology had promised.<sup>234</sup> Instead, parishioners turned over considerable sums of money to the Church and were left without the benefits that were promised to them.<sup>235</sup> Meanwhile, the Church is reveling in hundreds of millions of dollars that are tax-exempt.<sup>236</sup> This substantial revenue goes to show that the Church of Scientology’s actions are not incidentally commercial, but *substantially* commercial—its sole objective is to make a profit.<sup>237</sup> It follows then, that because the Church’s actions were deemed substantially commercial during the initial revocation of its tax exemption in 1967, and nothing has changed regarding the purchase and sale of these religious services and materials since then, the IRS should reinvestigate the Church’s operations to ensure that each individual Scientology organization complies with the statutory requirement prohibiting § 501(c)(3) organizations from engaging in substantial commercial activities that are unrelated to their tax-exempt purpose.

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229. *Id.* at 475–76.

230. *Id.* at 476.

231. SCIENTOLOGY, *supra* note 48.

232. *See* SCIENTOLOGY, *supra* note 57; SCIENTOLOGY, *supra* note 209.

233. Nededog, *supra* note 225.

234. GOING CLEAR: SCIENTOLOGY AND THE PRISON OF BELIEF (HBO Documentary Films 2015) [hereinafter GOING CLEAR DOCUMENTARY].

235. *See id.*

236. *See Scientology Is Bigger, Richer and Growing Faster Than You Realized*, BUS. INSIDER (July 20, 2012, 2:37 PM), <https://www.businessinsider.com/scientology-is-biggest-religious-money-maker-2012-7> (estimating the Church’s total annual revenue at around \$500 million).

237. *Scientology I*, 83 T.C. 381, 476 (1984), *aff’d*, 823 F.2d 1310 (9th Cir. 1987).

Under different circumstances, a nonprofit organization could avoid revocation of its § 501(c)(3) status by reporting the unrelated business income it generated from unrelated commercial activity to the IRS, and subsequently paying the unrelated business income tax on those profits.<sup>238</sup> The primary purpose of the unrelated business income tax is “to prevent unfair competition between exempt and taxable organizations.”<sup>239</sup> When a nonprofit organization’s unrelated business income is considerably high, a proportionate tax will be assessed, and there would effectively be no cognizable difference between the tax treatment of for-profit and nonprofit organizations.<sup>240</sup> Therefore, if a “substantial”<sup>241</sup> portion of a nonprofit organization’s income is comprised of unrelated business income, that organization is at risk of losing its tax exemption status.<sup>242</sup> As a result, unrelated business income tax would not preclude or excuse the IRS from reexamining Scientology’s compliance with the Commercial Activity Requirement because the unrelated business income would likely constitute a substantial enough portion of the Church’s overall income to warrant total revocation of its tax exemption status.

#### IV. THE FAIR GAME POLICY: AN UNFAIR SUPPRESSION OF FREE SPEECH

Tax-exempt religions must also comply with the common law requirement prohibiting § 501(c)(3) organizations from engaging in activities that violate a fundamental national public policy.<sup>243</sup> Though the judiciary has not extended public policy beyond cases involving an organization’s racial discrimination, advocacy of civil disobedience, or involvement in criminal activities,<sup>244</sup> Scientology’s active suppression of other’s free speech rights warrants a new addition to the obscure list of fundamental national public policies.

The First Amendment freedom of speech protection has existed since the inception of our nation and is undoubtedly more historically grounded in

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238. I.R.C. § 511(a)(2)(A).

239. *Taxation of Unrelated Business Income (UBIT)*, HURWITZ & ASSOCS., <https://www.hurwitzassociates.com/taxation-of-unrelated-business-income/taxation-of-unrelated-business-income/> (last visited Oct. 12, 2021).

240. *See id.*

241. Currently, no statute or court decision dictates a fixed percentage of an organization’s gross income or a mechanical test to use in determining what amount of unrelated business income is substantial enough to warrant revocation of an organization’s tax-exempt status. *Id.*

242. *Ind. Retail Hardware Ass’n, Inc., v. United States*, 366 F.2d 998, 1002 (Ct. Cl. 1966) (“We are of opinion that Congress did not mean to grant exemption from the payment of taxes to an association engaged to such a large extent in activities ordinarily carried on for profit by persons liable for the payment of taxes on the income derived from such activities.”).

243. *Bob Jones Univ. v. United States*, 461 U.S. 574, 592 (1983).

244. *Mirkay*, *supra* note 109, at 720.

our country's ideology than racial equality or gay marriage.<sup>245</sup> This is not to say that any one of these constitutionally protected rights is more important than the others, only that freedom of speech has been a more widely protected right for much longer than racial equality and same-sex-marriage protections have existed.<sup>246</sup> The First Amendment unequivocally guaranteed freedom of speech, and this nation was founded on the principle that American citizens should have the ability to freely express themselves—even if such expressions result in disagreements with one another.<sup>247</sup> While racial equality is now at the forefront of the nation's attention, it has not always been a founding principle—but freedom of speech has been.<sup>248</sup>

Accordingly, despite *Bob Jones*'s lack of guidance in defining public policy, freedom of speech is so deeply rooted in our history that the Church of Scientology's active measures to suppress the same should not go unnoticed or unchecked. While the First Amendment prohibits only governmental abridgment of speech and not private abridgement of speech,<sup>249</sup> the principle that a tax-exempt organization should not suppress another's ability to exercise that right should be considered a fundamental national public policy under the holding in *Bob Jones*, and violation of the same should result in revocation of an organization's tax exemption status.<sup>250</sup> This section will explore Scientology's current policies and tactics used to inhibit the general public's free speech rights and explain the necessity of extending the holding in *Bob Jones*.

### A. Scientology's Restrictive Policies

After the IRS revoked Scientology's tax exemption status in 1967,<sup>251</sup> the Church employed the Fair Game Policy.<sup>252</sup> Fair Game encouraged Scientologists to harass, discriminate against, and—according to the policy—even go as far as to injure any person who opposed the practices of

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245. The First Amendment to the Constitution (guaranteeing freedom of speech) was passed in 1789. *First Amendment*, CONST. CTR. [hereinafter *First Amendment*], <https://constitutioncenter.org/interactive-constitution/amendment/amendment-i> (last visited Oct. 12, 2021). In contrast, the Fourteenth Amendment to the Constitution (addressing racial discrimination) was not passed until 1866—some seventy-seven years later. *14th Amendment*, CONST. CTR. [hereinafter *14th Amendment*], <https://constitutioncenter.org/interactive-constitution/amendment/amendment-xiv> (last visited Oct. 12, 2021). Further, *Obergefell v. Hodges* (legalizing same-sex-marriage) was not decided until 2015—some 226 years after the Constitution guaranteed freedom of speech. See generally *Obergefell v. Hodges*, 576 U.S. 644 (2015).

246. See *First Amendment*, *supra* note 245; *14th Amendment*, *supra* note 245; see generally *Obergefell*, 576 U.S. 644.

247. See U.S. CONST. amend. I.

248. See *First Amendment*, *supra* note 245 (establishing the timeline of constitutional protections for freedom of speech and equal protection).

249. *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1928 (2019).

250. See *Bob Jones Univ. v. United States*, 461 U.S. 574, 592 (1983).

251. Frantz, *supra* note 1.

252. *Id.*

Scientology.<sup>253</sup> The primary purpose of these suppressive policies was to ensure that the disparaging truths of the religion remained secret.<sup>254</sup> Church officials have since claimed that Fair Game was revoked long ago because people “misunderstood” the policy,<sup>255</sup> though many former Scientologists who only recently left the Church have admitted that, internally, the Church still employs and encourages the use of Fair Game.<sup>256</sup> These Scientology defectors have provided great insight into the once very secretive religion, and they all attest to the same things: Scientology still seeks to destroy those who condemn it.<sup>257</sup>

The Fair Game Policy—or any alternatively named policy with the same underlying tenets—directly obstructs others right to freedom of speech under the First Amendment. This policy not only bullies those who attempt to speak out against the religion, but it also bullies its own members into staying in the religion.<sup>258</sup> For example, if a current Scientologist fails to disconnect from a Scientology defector—a labeled enemy of the Church—by severing all relational ties with the person, the current Scientologist will also be deemed an enemy.<sup>259</sup> This often results in the loss of friends, family, and in some cases even children, who are still members of the Church of Scientology.<sup>260</sup>

#### *B. Fair Game Illustrated: Sloat v. Rathbun*

One of the more recent, highly publicized examples of the Church’s suppressive measures is illustrated in the 2015 Texas case, *Sloat v. Rathbun*.<sup>261</sup> In *Sloat*, the plaintiff brought suit against various Church of Scientology organizations, alleging harassment and invasion of privacy.<sup>262</sup> The plaintiff’s husband, Marty Rathbun, was a former Scientology executive who often publicly spoke out about the Church; however, the plaintiff herself never publicly expressed an opinion concerning Scientology.<sup>263</sup> Despite this, she soon became a target.<sup>264</sup> She alleged that members of the Church of Scientology, under the Church’s direction, conducted electronic surveillance

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253. *Id.*

254. *See Religious Tech. Ctr. v. Lerma*, 908 F. Supp. 1353, 1360 (E.D. Va. 1995) (“[T]he Court is now convinced that the primary motivation of [the Church of Scientology] in suing [the defendants] . . . is to stifle criticism of Scientology in general and to harass its critics. As the increasingly vitriolic rhetoric of its briefs and oral argument now demonstrate, the [Church] appears far more concerned about criticism of Scientology than vindication of its secrets.”).

255. SCIENTOLOGY NEWSROOM, *supra* note 132.

256. Rinder, *supra* note 133.

257. *Id.*

258. Mike Rinder, *Scientology Disconnection*, MIKE RINDER’S BLOG (June 8, 2016), <https://www.mikerindersblog.org/scientology-disconnection/>.

259. *Id.*

260. *Id.*

261. *See generally Sloat v. Rathbun*, 513 S.W.3d 500 (Tex. App.—Austin 2015, pet. dism’d).

262. *Id.* at 501.

263. *Id.* at 505.

264. *See id.* at 505–06.

of her home and workplace; made threats to her electronically, over the phone, and in person; followed and stalked her; contacted her close friends and family members; sent sex toys to her workplace; and even published comments with the potential to disparage her reputation, including that she was transgender and a “sexual pervert.”<sup>265</sup>

The Scientology defendants responded to the allegations by claiming that these actions were protected by their First Amendment right of free speech, right to petition, and right of association.<sup>266</sup> The court rejected these arguments, noting that while some activities—such as holding protest signs outside of her house, or filming her for a Scientology documentary—could constitute protected rights, the Church’s other behaviors such as threatening her, sending inappropriate items to her workplace, and publishing false information were not constitutionally protected activities.<sup>267</sup>

Additionally, an affidavit of a videographer hired by the Church to conduct surveillance revealed the sinister nature of the Church’s actions; in his testimony he revealed that he was told “the purpose of going to . . . [the plaintiff’s house] was ‘to make the . . . [plaintiff’s] life a living hell’ and ‘to turn their neighbors against them’ so they would be forced to move.”<sup>268</sup> The record also contained another affidavit of a former Scientologist that revealed how the Church “deals with people it perceives as ‘attackers’ of Scientology.”<sup>269</sup> The former Scientologist revealed the Church’s “principle of finding out what the . . . [critic] is seeking to protect and threatening that in order to ‘restrain’ the ‘attacker.’”<sup>270</sup> This case, and both of these affidavits are strong evidence that the Church still employs the Fair Game Policy—despite its contentions that the policy is no longer in effect.

*C. Permitting Suppression of Free Speech Defeats the Purpose of Requiring Tax-Exempt Organizations to Confer a Public Benefit*

Under *Bob Jones* and its related decisions, the Supreme Court has only revoked an organization’s tax exemption status for violating public policy under three scenarios: racial discrimination, encouragement of violent civil disobedience, and violation of criminal statutes.<sup>271</sup> In each of these decisions, the deciding court acknowledged the general requirement that tax-exempt organizations confer some benefit upon the public.<sup>272</sup> Thus, to retain its tax

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265. *Id.*

266. *Id.* at 506.

267. *Id.* at 507.

268. *Id.* at 505 n.4.

269. *Id.*

270. *Id.*

271. Mirkay, *supra* note 109, at 720.

272. *Bob Jones Univ. v. United States*, 461 U.S. 574, 591 (1983) (racial discrimination); *Synanon Church v. United States*, 579 F. Supp. 967, 970–71 (D.D.C. 1984), *aff’d*, 820 F.2d 421 (D.C. Cir. 1987)

exemption status, “[t]he institution’s purpose must not be so at odds with the common community conscience as to undermine any public benefit that might otherwise be conferred.”<sup>273</sup>

The practices and policies of the Church of Scientology which aim to suppress other’s free speech rights achieve the opposite of conferring a public benefit; these tactics result in public harm.<sup>274</sup> Every member of the general public—including former Scientologists and Scientology critics—has a right to speak about the religion in any manner they choose and to whomever they choose,<sup>275</sup> yet, with Scientology’s current practices, they do so at the risk of damaging their reputation, being harassed and stalked, and potentially never seeing close friends and family members ever again.<sup>276</sup> The policies are meant to protect those inside the Church from learning the truth of the religion, while suppressing the speech of those outside the Church by harassing them into silence so that they never speak out against it.<sup>277</sup>

Protection from suppression of speech should unquestionably be characterized as a fundamental national public policy. This nation was founded on the principles of freedom of speech, and Scientology should not be allowed to actively suppress this right while also enjoying tax exemption status. When compared to the Court’s reasoning in *Bob Jones*, this proposed public policy also achieves important public interest goals. In establishing the public policy against racial discrimination in education, the Court repeatedly noted that “[t]he right of a student not to be segregated on racial grounds in schools . . . is indeed [] fundamental,” and that such “[d]iscriminatory treatment exerts a pervasive influence on the entire educational process.”<sup>278</sup> In considering Scientology’s active measures to suppress the speech of others, it is likewise true that the right of a citizen not to be harassed for making statements about their experiences or expressing their opinions is also fundamental.<sup>279</sup> Surely, it cannot be said that stalking and harassing members of the community as retaliation for their speech constitutes a “beneficial and stabilizing influence[] in community life.”<sup>280</sup>

This Comment is not suggesting that the Church lose its tax-exempt status by taking reasonable measures to control public disclosures, such as requiring new Scientologists to execute a nondisclosure agreement at the time

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(encouraging violent civil disobedience); *Scientology I*, 83 T.C. 381, 457 (1984), *aff’d*, 823 F.2d 1310 (9th Cir. 1987) (violation of criminal statutes).

273. *Bob Jones*, 461 U.S. at 592.

274. *See Sloat*, 513 S.W.3d at 505–07; *Religious Tech. Ctr. v. Lerma*, 908 F. Supp. 1353, 1360 (E.D. Va. 1995).

275. *See* U.S. CONST. amend. I.

276. *See, e.g., Sloat*, 513 S.W.3d at 505–07 (illustrating the perils of publicly critiquing or associating with someone else who publicly critiques the Church of Scientology).

277. *See Lerma*, 908 F. Supp. at 1360.

278. *Bob Jones*, 461 U.S. at 593–94 (first quoting *Cooper v. Aaron*, 358 U.S. 1, 19 (1958); and then quoting *Norwood v. Harrison*, 413 U.S. 455, 469 (1973)).

279. *See* U.S. CONST. amend. I.

280. *Walz v. Tax Comm’n of N.Y.*, 397 U.S. 664, 673 (1970).

they join the religion. Rather, this Comment intends to address the active, invasive measures taken to stalk and harass members of the general public in order to scare them into silence. In *Sloat*, the Church followed and recorded the plaintiff; both at her house and workplace; repeatedly threatened her; contacted her friends and family; and attempted to destroy her career by sending sex toys to her work and posting false accusations about her online.<sup>281</sup> These actions were not only an invasion of privacy but a blatant attempt to injure her interpersonal relationships, damage her professional reputation, and cause immense distress.<sup>282</sup> In permitting these harmful actions to continue without repercussions, the requirement that tax-exempt organizations confer a public benefit serves no purpose in cases in which the public harm conferred substantially outweighs any public benefit, as illustrated in *Sloat*.<sup>283</sup>

Further, in applying *Bob Jones* to this context, this position does not take away any religious liberties from Scientology. Just as the Court previously noted, taking away tax-exempt status from a religious organization for violating fundamental public policies does not hinder its First Amendment freedom of religion protections—revocation merely refuses to grant the privilege of tax exemption to an organization whose actions are harmful to national objectives.<sup>284</sup> Accordingly, the IRS should reinvestigate the Church of Scientology's tax exemption status on the grounds that the Church engages in activities, and encourages the use of tactics, that violate a fundamental public policy in this nation: that a tax-exempt organization should not take active measures to suppress or hinder any member of the general public's right to exercise free speech.

#### V. PRIVATE INUREMENT: PERSONAL GAIN AT THE EXPENSE OF CHURCH PARISHIONERS

To maintain tax exemption under § 501(c)(3), a charitable or religious organization must not engage in private inurement.<sup>285</sup> Private inurement occurs when an insider—a leader or someone with significant influence in an organization—receives greater benefits from the organization than what is provided to a general member.<sup>286</sup> Typically, this occurs when an organization funnels profits or extreme “perks” to a person involved in the organization—therefore, providing the person with greater benefits than the other members in the organization receive.<sup>287</sup> The Internal Revenue Code prohibits private

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281. *Sloat*, 513 S.W.3d at 505–06.

282. *See id.*

283. *See id.*

284. *See Bob Jones Univ. v. United States*, 461 U.S. 574, 603–04 (1983).

285. *Scientology I*, 83 T.C. 381, 491 (1984), *aff'd*, 823 F.2d 1310 (9th Cir. 1987).

286. *Id.*

287. *See id.*

inurement in § 501(c)(3) organizations because the entire purpose of charitable and religious organizations is to provide a benefit for the community as a whole rather than for a sole individual.<sup>288</sup>

When the Church lost its tax exemption status in 1967, the primary basis for revocation was private inurement for the benefit of L. Ron Hubbard, the leader of Scientology at the time.<sup>289</sup> Hubbard used Church funds to build massive personal private residences in different states, and essentially relied on Church revenue for all of his personal expenses.<sup>290</sup> Similar practices are seemingly still occurring in the Church today.<sup>291</sup> While it is difficult to ascertain how exactly the Church distributes compensation or gifts to insiders without seeing any of Scientology's financial records,<sup>292</sup> the following examples found in the public domain raise substantial questions that warrant a more in-depth investigation by a capable and competent government agency that has the authority to request the financial documents necessary to reach a more finite conclusion on the matter.

#### *A. Lavish Executive Living Quarters & Personal Perks*

The current leader of the Church of Scientology is David Miscavige, who took over after Hubbard's death in 1986.<sup>293</sup> For tax exemption purposes, the payment of a reasonable salary does not constitute private inurement; however, the payment of an excessive salary does.<sup>294</sup> According to Scientology reports from 1991, Miscavige received a salary of \$62,683.<sup>295</sup> Accounting for inflation and assuming he retains a similar rate of compensation, Miscavige would earn around \$120,000 in the present day<sup>296</sup>—though a report from 2005 indicates that his salary may have dipped to \$50,000.<sup>297</sup> Nevertheless, as former Scientologists have spoken out about the vast amounts that Miscavige spends on material items for his personal

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288. *Bob Jones*, 461 U.S. at 590.

289. Frantz, *supra* note 1.

290. *See Scientology I*, 83 T.C. at 491.

291. *See discussion infra* Sections V.A–V.B (discussing various practices of the Church that might constitute private inurement).

292. Because Scientology is a church, it is exempt from filing Form 990 informational returns, which would typically contain information regarding compensation of an organization's executives and officers. Montague, *supra* note 121, at 205 n.2.

293. Jethro Nededog, *How Scientology Leader David Miscavige Rose to Power, According to Insiders*, BUS. INSIDER (Dec. 21, 2016, 4:22 PM), <https://www.businessinsider.com/scientology-leader-david-miscavige-leah-remini-ae-2016-12>.

294. *Church of Eternal Life & Liberty, Inc. v. Comm'r*, 86 T.C. 916, 926 (1986).

295. Robert D. Hershey Jr., *Scientologists Report Assets of \$400 Million*, N.Y. TIMES, Oct. 22, 1993 (SA), at 12.

296. U.S. INFLATION CALCULATOR, <https://www.usinflationcalculator.com/> (last visited Oct. 12, 2021).

297. Thomas C. Tobin, *The Man Behind Scientology*, TAMPA BAY TIMES (Sept. 13, 2005), <https://www.tampabay.com/archive/1998/10/25/the-man-behind-scientology/>.

use, questions have surfaced regarding whether the Church has rekindled its private inurement practices.<sup>298</sup>

While Miscavige's current residence is unknown, he has previously resided in lavish multi-million-dollar properties in California that belong to the Church.<sup>299</sup> The Church has several of these private residences including "Bonnie View" in San Jacinto, California; "LRH House" in Petrolia, California; "Trementina Base" in Trementina, California; "Lady Washington Mine" in Tuolumne, California; and "Creston Ranch" in San Luis Obispo, California.<sup>300</sup> All of these private residences were paid for with Church funds, and only top executives of Scientology may reside in them—so they often remain empty.<sup>301</sup>

Miscavige's office is located in Scientology's Gold Base in San Jacinto, California.<sup>302</sup> When he first decided to relocate his headquarters to Gold Base, he paid over \$2.7 million in Church funds to renovate the compound up to his standards, and he often referred to it as "his building" rather than one belonging to the Church.<sup>303</sup> These renovations were anything but subtle.<sup>304</sup> Miscavige insisted upon purchasing the highest quality imported materials and custom-built furniture.<sup>305</sup> Furthermore, this building is enjoyed solely by Miscavige and his invitees, as it is "off limits to anyone other than [his staff] and those who have been summoned."<sup>306</sup>

These lavish living and working spaces are not the only benefits Miscavige has received as the leader of Scientology—he has also received more personal perks.<sup>307</sup> Miscavige maintains a personal garage on another one of Scientology's large properties, Author Services, Inc. in Hollywood, California, which he uses to store his many cars and motorcycles.<sup>308</sup> Additionally, in publicly released Scientology promotional photos, critics were quick to acknowledge that Miscavige donned an expensive watch on

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298. See, e.g., Mike Rinder, *David Miscavige's Office at Gold*, MIKE RINDER'S BLOG (May 18, 2014), <https://www.mikerindersblog.org/scientology-building-gold/> (questioning Miscavige's office remodel and redecoration expenditures); Tony Ortega, *Hey, IRS: You Might Want to Look at This New Photo Scientology Posted of David Miscavige*, THE UNDERGROUND BUNKER (Mar. 16, 2018), <https://tonyortega.org/2018/03/16/hey-irs-you-might-want-to-look-at-this-new-photo-scientology-posted-of-david-miscavige/> (pointing to expensive luxury items worn by Miscavige and suggesting that the Church purchased the items for him).

299. Tony Ortega, *Where in the World is Scientology Leader David Miscavige?*, THE UNDERGROUND BUNKER (Jan. 23, 2020), <https://tonyortega.org/2020/01/23/where-in-the-world-is-scientology-leader-david-miscavige/>.

300. Leah Remini: *Scientology and the Aftermath*, *supra* note 12.

301. *Id.*

302. Rinder, *supra* note 298.

303. *Id.*

304. *See id.*

305. *Id.*

306. *Id.*

307. *See* Ortega, *supra* note 213.

308. *Id.*

his left wrist.<sup>309</sup> After some investigation, these critics came to the conclusion that it was a “Drive de Cartier” wristwatch, which retails for \$19,100—a hefty sum that many believe the Church paid for.<sup>310</sup>

All of these purchases, if the Church indeed subsidized them, illustrate private inurement for the benefit of David Miscavige. It is unlikely that a man living solely on a Church salary could afford multi-million-dollar mansions, \$2.7 million in renovation efforts, a private garage for multiple personal cars and motorcycles, and an expensive designer watch. This begs the question whether Miscavige utilized Scientology’s net earnings for his own private benefit, as he appears to receive far more perks than other, less powerful members of the Church.<sup>311</sup> While it is acknowledged that not everything published in the media is true, the fact that there are multiple allegations that Miscavige directs Church funds to cover his own personal lavish lifestyle choices should raise red flags for the IRS<sup>312</sup>—flags that warrant an investigation into the Church’s current compensation and gift policies.

### *B. Advantages for Influential Celebrities*

Scientology’s private inurement is not exclusive to Miscavige.<sup>313</sup> Tom Cruise—perhaps one of Scientology’s most famous and influential members—also receives immense benefits from the Church.<sup>314</sup> Cruise is often viewed as an incredibly important and influential member of Scientology because of his high-society status as an actor.<sup>315</sup> Accordingly, the Church has expended substantial sums over the years to present numerous extravagant gifts to Cruise.<sup>316</sup>

The Church owns a massive yacht, the *Freewinds*, which stretches 440-feet in length and is home to Scientology’s Flag Ship Service Organization.<sup>317</sup> One year, the Church held a birthday party on the *Freewinds* for Cruise and various Scientology leaders.<sup>318</sup> The party was complete with music, lights, food, drinks, and entertainment.<sup>319</sup> No expense was spared.<sup>320</sup>

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309. Ortega, *supra* note 298.

310. *Id.*

311. See *Scientology I*, 83 T.C. at 381, 491 (1984), *aff’d*, 823 F.2d 1310 (9th Cir. 1997) (noting that private inurement occurs when a leader receives perks from an organization that other members do not).

312. See Horwitz, *supra* note 8, at 109–10.

313. See Ortega, *supra* note 213.

314. See GOING CLEAR DOCUMENTARY, *supra* note 234.

315. Emily Smith, *Scientists Consider Tom Cruise to Be a ‘Deity’*, PAGE SIX (Mar. 27, 2019, 9:37 PM), <https://pagesix.com/2019/03/27/scientologists-consider-tom-cruise-to-be-a-deity/>.

316. See Ortega, *supra* note 213.

317. *What is the Freewinds?*, SCIENTOLOGY, <https://www.scientology.org/faq/the-organization-of-scientology/what-is-the-freewinds.html> (last visited Oct. 12, 2021).

318. GOING CLEAR DOCUMENTARY, *supra* note 234.

319. See *id.*

320. See *id.*

In addition to hosting elaborate parties on its private yacht, Scientology has also bestowed upon Cruise numerous other luxurious gifts.<sup>321</sup> After visiting Miscavige's own garage, Cruise commented on how great it looked and expressed interest in having his own airplane hangar similarly decorated.<sup>322</sup> Shortly thereafter, Miscavige engaged Scientology's cinema division to construct massive signs and redesign the office in Cruise's airplane hangar.<sup>323</sup> Witness accounts attest that this redecoration was entirely funded by the Church.<sup>324</sup>

Moreover, Cruise has also received a custom vehicle from the Church.<sup>325</sup> One former Scientologist spoke out regarding the incredible luxuries gifted to Cruise over the years.<sup>326</sup> An example of which is a Ford Excursion that was gutted and fully customized for Cruise.<sup>327</sup> Much of the vehicle's interior had been replaced "with wood sculpted from the burl of a Eucalyptus tree that had been blown down in a storm at Scientology's International Base."<sup>328</sup> The International Base held sentimental value for Cruise, because he completed many auditing sessions there, and the designer "thought that carrying around a piece of the compound in his car might have some meaning for [Cruise]."<sup>329</sup> In addition to the new fully-custom surfaces, the Excursion was outfitted with a special hidden compartment that contained a pen that matched the vehicle's interior.<sup>330</sup> This vehicle was also paid for entirely by the Church, and Miscavige took full credit for Scientology's immaculate gift.<sup>331</sup>

The entire purpose behind § 501(c)(3) tax exemption is that these organizations confer some public benefit.<sup>332</sup> Accordingly, an organization is at risk of losing its tax-exempt status by facilitating private inurement of insiders, regardless of the amount.<sup>333</sup> As evidenced above, the top leaders and influential members of Scientology, including Miscavige and Cruise, are suspected of reaping private benefits from the substantial profits of the Church for years now.<sup>334</sup> While this information found in the public domain may not constitute sufficient concrete evidence to establish that private inurement is unquestionably occurring, it nevertheless raises red flags that

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321. See Ortega, *supra* note 213.

322. *Id.*

323. *Id.*

324. *Id.*

325. *Id.*

326. *Id.*

327. *Id.*

328. *Id.*

329. *Id.*

330. *Id.*

331. *Id.*

332. Bob Jones Univ. v. United States, 461 U.S. 574, 590 (1983).

333. Founding Church of Scientology v. United States, 412 F.2d 1197, 1202 (Ct. Cl. 1969).

334. See *supra* notes 289–327 and accompanying text (discussing the private inurement of top leaders and celebrities in the Church of Scientology).

necessitate a reevaluation of the Church's compliance with § 501(c)(3) tax exemption requirements.

## VI. CONCLUSION

As a protected religion under the First Amendment, the Church of Scientology should undoubtedly enjoy the governmental protections and benefits afforded to religious organizations in this country. However, the Church's current practices and activities raise substantial concerns relating to its compliance with certain requirements necessary to maintain § 501(c)(3) status, which justifies a reexamination of its tax exemption eligibility. The Church engages in activities that are substantially commercial and unrelated to its religious purpose.<sup>335</sup> Further, the Church violates the fundamental national public policy that an organization should not actively encourage and engage in suppressing the free speech rights of those who speak out against Scientology.<sup>336</sup> Lastly, the Church facilitates private inurement of top executives and influential celebrity members by bestowing upon them lavish gifts and personal perks.<sup>337</sup>

For these reasons, the IRS should reevaluate the blanket tax exemption of all Scientology organizations, or risk undermining judicial decisions and creating the dangerous precedent that persistent attacks on governmental agencies will in turn lead to leniency and submission. The Church's actions that resulted in the initial revocation of its tax-exempt status have not ceased or changed in any significant manner as time has passed. These actions are indeed still occurring and warrant a reevaluation of Scientology's compliance with § 501(c)(3) requirements.

Should the IRS investigate and determine that all Scientology organizations comply with the requirements of § 501(c)(3), then retention of their tax exemption status would be merited and unopposed, but to permit such activities to continue without question would undoubtedly defeat the principles behind tax exemption and raise concerns regarding the fairness of IRS decisions. Without further evaluation, the government risks subsidizing an organization that does not comply with the requirements of § 501(c)(3), and that fails to further the essential purpose of tax exemption in the United States.

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335. *See supra* Part III (discussing the commercial activities of the Church).

336. *See supra* Part IV (discussing how the Church suppresses free speech).

337. *See supra* Part V (discussing how the Church facilitates private inurement).